

BOARD OF ZONING APPEALS

The regular meeting of the Board of Zoning Appeals was held on March 3, 2016 at 7:00 p.m. in the Public Safety Building located at 500 Quincy Street.

President Manchin called the meeting to order at 7:00 p.m.

ROLL CALL OF MEMBERS

Present

President Joe Manchin
Vice President John Six
Board Member Ray Friend
Board Member Aron Majic
Board Member Gia Deasy

Absent

City Staff Present

City Manager, Robin Gomez
Recording Secretary Maria Cipolla

APPROVAL OF MINUTES

President Manchin asked for a motion to approve the minutes from January 7, 2016.

Board Member Six motioned to approve the minutes.

Board Member Friend seconded the motion.

Motion carried 5-0.

PUBLIC HEARINGS FOR March 3, 2016

1. THE APPLICATION FOR A CONDITIONAL USE PERMIT TO PROVIDE FOR THE INSTALLATION OF A RETAIL AUTOMOBILE FUELING STATION WITH FUEL SERVICE EXTERIOR WALK-UP WINDOW IN EXISTING PARKING LOT OF SHOP-N-SAVE GROCERY STORE LOCATED AT 1225 FAIRMONT AVENUE, FAIRMONT, MARION COUNTY, WEST VIRGINIA, ON REAL PROPERTY OWNED BY TEDA J FAMILY LIMITED PARTNERSHIP, BEING PARCEL 1 OF MARION COUNTY TAX MAP 03-7, SAID PROPERTY BEING ZONED MAIN CORRIDOR COMMERCIAL.

President Manchin asked if there was anyone else to speak in favor of this request.

James Preisach, with Precise Tank Modifications from Madison, PA, stated we are looking to install retail-fueling stations in the parking lot of the existing Shop-N-Save Center so the customers can use their fueling perks. It's a program similar to Giant Eagle's or Kroger's. This is for the small chains to compete with the larger companies in the area. We have had several pre-planning meetings with the fire, sewer, water, and other departments to alleviate some of the problems. We are fairly confident that we have satisfied their needs and concerns. We are not seeking permits for signage at this time. J.D. Signs will be doing the sign permits and they will conform to whatever the City's regulations are. The fuel system itself has no requirements or limitations from the DEP. If we can obtain approval from the Council here than we will be seeking approval from the WV DEP. I don't foresee any issues there. We are a certified contractor in West Virginia through the DEP and the West Virginia State licensing board.

President Manchin asked if he received any feedback about the slope of the parking lot. Is there any leveling that will have to happen or can you put it in as is?

James Preisach replied, we will have to do some grade work. The turn of the canopy design has been negated due to the slope of the property. The area that we propose to put it in is the most logical and level area of the parking lot. There is a site profile with three different grading options. We are going to get that as level as possible. Usually 2% is where you want to be with a fueling canopy. So we will have 2% and blend back in. It won't be much of an issue. We will be able to accomplish it. We have done a very similar project for the Jamison Family in Shinnston and Mannington, WV. We are getting good feedback and they want to do another one of their properties. Since we did those projects, there has been no recourse from these cities or their officials.

President Manchin said, we all live here. We shop there. Our biggest concern was the other side of the parking lot. We were just sort of talking about why the other side of the parking lot is not being utilized. Did they ever look at that or is it just not conducive because people may have to pay with cash and walking that far to the store?

James Preisach said, yes, you are exactly correct. To move the fueling system out into that area, it is not as accessible. It would require an attendant booth, a separate attendant, separate restroom facilities, and a lot more communications back to the store. The attendant will be in the store. They will have a walk up window on the outside of the building installed.

President Manchin asked, does anyone have any more questions?

Maria Cipolla asked will it only be open when the store is open.

James Preisach said, yes, the hours of operation are restricted to hours of the store's hour. After hours, there will be no access to the fueling system, not even with a credit card. There will be an attendant on duty at all times. It will close at 10:00 p.m. Fuel delivery is set up tentatively to be done during off hours so we don't have issues with traffic, parking, and customers while they are delivering the fuel to the site. That is typical for the Shinnston and Mannington stores as well. They are not trying to pull traffic off of Fairmont Avenue and bring in that much more business. It is really to service the customers who are already going to shop at the store.

President Manchin asked if there was anyone here to speak against this proposal.

Bill Oliver said, I don't want to speak for or against it but I do have a couple of concerns I would like to address if you could answer.

President Manchin said yes. If you wouldn't mind coming forward and giving us your name for the record.

Bill Oliver said, I am chairman of the City of Fairmont's Planning Commission. I know you have a Little Caesar's Pizza in there as well as another store that is unoccupied. When the tanker truckers come in to fill, are they going to have the ability to get in there without blocking the light along Fairmont Avenue to fill the tanks?

James Preisach said, no, the tank will be up in the parking lot closer to the store. They will be filling on off hours so that section of the Shop-N-Save will be closed. Theoretically, there shouldn't be any traffic and should not affect either one of the other businesses in the parking lot.

Bill Oliver added, I have been to the one in Mannington. It is nice. They did a nice job on it. It is easy to get in and out. It is always nice to have more business coming to Fairmont Avenue. That was my only question.

President Manchin asked for any other comments from the audience.
There were none.

President Manchin asked for a motion to close the public hearing.

Board Member Friend motioned to close.

Board Member Six seconded the motion.

Motion carried 5-0

President Manchin asked for any comments or concerns from the other Board members.

Board Member Deasy said, when I look at the layout, it looks like it makes sense as far as getting in and out. That was my only concern.

President Manchin said, the thing I looked at is you are taking a number of parking spots.

Board Member Deasy asked if there were two tanks going in underground.

James Preisach said, it is actually one tank with two compartments. It will be 15, 000 gallons of regular gas and 6,000 gallons of premium gasoline with four nozzles above ground to accommodate four cars at once.

Maria Cipolla asked, if they would be putting in additional handicapped parking since the pumps will be eliminating some of the existing ones.

James Preisach replied, yes, we will work with the zoning concerning the amount of handicap spaces needed.

President Manchin said, if there are no additional comments or questions from the Board, I would entertain any motion at this time.

Board Member Six said, for the record, we need to read the agency comments.

President Manchin read the only negative agency comment received. It was from the Chief of Police, Steve Shine. It is as follows: Do to the current layout of the streets and parking lot, they cannot support additional traffic without high congestion. The area of Fairmont Avenue already has congestion issues effecting proper use of the turning lanes in the street. High congestion can lead to frustrated drivers, higher rates of vehicular crashes, and road rage incidents. These and delays of emergency vehicles are some of the negative impacts possible with this location. There is already a problem there and since this is a state road, the City is not able to mitigate the issues internally.

President Manchin added, I was going to say the same thing. The state would have to come in and remedy this issue. I like the response that they are not trying to draw more people in. It is more for convenience for the customers who are coming in the shop as well. They would have been there anyway. I think there are enough back roads to mitigate traffic.

President Manchin asked **Maria Cipolla** for the staff report.

Maria Cipolla, Planning Department Secretary, read the staff report.

President Manchin said he asked for a motion at this time.

Board Member Six moved to approve the conditional use.

Board Member Friend seconded the motion.

Motion carried 5-0

DISPOSITION OF PAST CASES

There were none.

OTHER BUSINESS

1. **A replacement for Board Member, Rich Wood.**

President Manchin introduced and welcomed **Gia Deasy** to the Board. She works currently with the Board of Education.

2. **The election of the President and Vice President.**

President Manchin asked for a nomination for any of the positions.

Board Member Friend nominated **Joe Manchin** as President of the Board.

President Manchin asked for any other nomination for this position or a motion to close if there were no other nominations.

Board Member Six motioned to close the nominations for President.

Board Member Friend seconded the motion.

Motion carried 5-0

President Manchin asked for nomination for the Vice President position.

Board Member Friend nominated **John Six** as Vice President.

President Manchin said, I would like to nominate **Aron Majic** for Vice President.

President Manchin said we have two nominations for Vice President. We will have to do a roll call vote.

Roll Call vote for John Six

Board Member Majic – Yes

Board Member Friend – Yes

Board Member Six – Yes

Board Member Deasy asked to abstain since it was her first day as a Board member.

President Manchin – no need to vote.

Motion carried – four in favor of John Six; one vote for Aron Majic; and one abstained.

President Manchin made a motion to close the election and congratulated **John Six** on becoming Vice President.

President Manchin added, this will be a one year term as Chairman for me. I believe everyone on this Board should have the opportunity to bring their personality and ideas to the Chairmanship. I look forward to serving as best as I can this year. Thank you.

Board Member Majic asked if he could hand something out and bring an issue to the Board's attention

President Manchin said sure.

Board Member Majic said, I noticed that this structure has gone up off of Eighth Street. At this time, he handed out packets to each Board Member with pictures of the property, pages copied out of the City's code book, and copies of pages from the City's Home Rule Plan. I just have some questions about that because it would appear to me that this is a non-conforming use. Reclaim has purchased that property. With it being Neighborhood Mixed Used, grandfathered or not, it is considered non-conforming which means if anything is going to be built, it should have come to us first.

Board Member Six said, I think permits and such would need to go through Building or Planning.

Maria Cipolla said, they wouldn't have gone through us (the Planning Department), they would have gone through the Building Department. Building should have said to them, this is a non-conforming use and you have to go through BZA before you can do anything.

Board Member Six said, the permit office saw it and they had no issues with it then it's out of our hands.

Maria Cipolla said, I'll bring it to Code tomorrow. I believe this is the Carriage House all over again. Before she could do those offices, she had to get that non-conforming use just like the people before her did. He should have to get that same permission.

Bill Oliver said, the Carriage House was already there, built and occupied. This is a new structure being built in a non-conforming use area. So it is totally illegal.

Bill Oliver asked if a building permit was obtained.

Maria Cipolla said, that's what we need to find out. I'll find that out tomorrow.

President Manchin asked if they are notified now to terminate.

Maria Cipolla told **President Manchin**, they will be tomorrow because I'll bring it to Code Enforcement tomorrow.

Robin Gomez, City Manager, said we will look into this tomorrow. What has been said is, it appears it is a structure that may or may not have a building permit. My guess is they may not have but we will review it tomorrow. We will let you know via email what exactly is happening. We will go through code process. What **Ms. Cipolla** said is what I was going to say as well. If it goes through our Building process and if they did not pull building permits, they will have to stop work and comply with our code and obtain a permit or come before the BZA..

Maria Cipolla said they are going for a rezoning before the Planning Commission in April.

Robin Gomez said, we will review this tomorrow.

President Manchin asked, what their plans for this property are.

Maria Cipolla said, on the application, he would like to use the same property for offices. He wants it changed over from Neighborhood Mixed Use to Main Corridor because he wants to be able to have 5,000 square feet of office space which he currently cannot have. It will be set on March 16th and have a public hearing on April 20th.

President Manchin asked, so this was down where the old Helmick Building is?

Board Member Majic said, it's off of Eight Street and then you go clear down to the end.

Robin Gomez added, it would appear the owner began before due process but we will enforce if needed.

Board Member Majic said, **Gia Deasy**, you need to thank **Bill Oliver** for a great recommendation in sticking his neck out for you. He talked to me, the **City Council**, and **Mayor Straight**. So congratulations and because of the great recommendation, we are expecting great things from you. He put me up to this. No pressure.

Everyone laughed.

Board Member Deasy replied, I'll have to thank **Billy Oliver** for that. Thank you.

Robin Gomez added, that he also wanted to welcome **Mrs. Deasy and Mr. Ragen** to the Board. Thank you and all of you for agreeing to serve as well. We appreciate that. One other additional thing, we are currently advertising for a Planning & Development Director. We are eagerly looking for an individual to fill that position. The position advertising will be until next Friday, March 11th.

ADJOURNMENT

President Manchin asks for a motion to adjourn.

Board Member Six motioned to adjourn.

Board Member Manchin seconded the motion.

Motion carried 5-0